



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

TLC

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/627,258 | 07/25/2003 | Paul L. Popelka | 5760-12600 | 7593 |
| 35690 | 7590 | 06/28/2006 | EXAMINER | LE, UYEN T |
| MHEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C. 700 LAVACA, SUITE 800 AUSTIN, TX 78701 | | | ART UNIT | PAPER NUMBER |
| | | | 2163 | |

DATE MAILED: 06/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/627,258 | POPELKA ET AL. | |
| | Examiner Uyen T. Le | Art Unit 2163 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-37 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
 5) Claim(s) ____ is/are allowed.
 6) Claim(s) 1-37 is/are rejected.
 7) Claim(s) ____ is/are objected to.
 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>16 October 2003</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

1. Claims 1-10 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 1 recites a cluster comprising of purely descriptive material or at best components that seem to be software per se. Note also that the claimed “plurality of nodes configured to” does not require the nodes to actually perform any function. Any system not prohibiting the functions enumerated after “configured to” meet the claim limitations.

Art rejection is applied in anticipation of applicant amending the claims to place them in one of the statutory class.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 3-37 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are:

- at claim 11, the nodes at lines 6-7 do not seem to relate to the service group of lines 2-5. Furthermore, the language of claim 3, lines 1-3, claim

11, lines 6, 7 is ambiguous. What fails over what? Besides the claim language of "configured to" does not require any actual function to be performed by any node

- at claim 3, it is not clear what is failing over what
- at claims 20, 27, 33, it is not clear how the file systems, nodes and service groups are related and what is failing over what.

Art rejection is not being applied to claims 3-37 because the limitations cannot be ascertained.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 1, 2 are rejected under 35 U.S.C. 102(a) as being anticipated by the related art of applicant's specification at pages 1-3.

Regarding claim 1, the claimed cluster merely comprises a plurality of file systems included in one of a plurality of service groups and a plurality of nodes, thus is met by any network file system of related art at page 1. The cluster of related art clearly has nodes configured to perform (i), (ii) and (iii) since it is part of a network and allows lock recovery using client list (see pages 1-2).

Regarding claim 2, the related art clearly shows each of the plurality of client lists is stored in at least one of the one or more file systems included in the respective service group (see page 2).

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Gadir et al (US 2003/0018927) teach high-availability cluster virtual server system.

Kingsbury (US 2003/0079155) teaches efficient lock recovery.

O'Brien et al (US 2005/0071470) teach techniques for maintaining high availability of networked systems.

Callahan et al (US 2003/0065686) teach system and method for a multi-node environment with shared storage.

Duso et al (US 6,625,750) teach hardware and software failover services for a file server.

Devarakonda et al, "Recovery in the Calypso File System", ACM Transactions on Computer Systems, Vol.14, No.3, August 1996, pages 287-310.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Uyen T. Le whose telephone number is 571-272-4021. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don Wong can be reached on 571-272-1834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

21 June 2006



UYEN LE
PRIMARY EXAMINER